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SERVICE DATE – SEPTEMBER 13, 2002

SURFACE TRANSPORTATION BOARD

DECISION

ICC Docket No. AB-55 (Sub-No. 486)<sup>1</sup>

CSX TRANSPORTATION, INC. – ABANDONMENT – BETWEEN  
BLOOMINGDALE AND MONTEZUMA, IN PARKE COUNTY, IN

STB Docket No. AB-55 (Sub-No. 579X)

CSX TRANSPORTATION, INC. – ABANDONMENT  
EXEMPTION – IN PARKE AND VERMILLION COUNTIES, IN

STB Finance Docket No. 34019<sup>2</sup>

MONTEZUMA GRAIN COMPANY, LLP  
AND  
PARKE COUNTY REDEVELOPMENT COMMISSION  
v.  
CSX TRANSPORTATION, INC.

Decided: September 6, 2002

By petition filed March 9, 2001, Montezuma Grain Company, LLP (MGC) and Parke County Redevelopment Commission (Parke County) (jointly, petitioners) ask us: (1) to reopen and partially vacate the abandonment authority issued in ICC Docket No. AB-55 (Sub-No. 486) (Montezuma Abandonment); and (2) to reopen and vacate all decisions issued in STB Docket No. AB-55 (Sub-No. 579X) (Hillsdale Abandonment). By complaint filed simultaneously with their petition, petitioners allege that CSX Transportation, Inc. (CSXT or respondent) has violated 49 U.S.C. 11101(a) by not replacing a crossing diamond at Hillsdale, IN and, thus, has failed to provide rail service to petitioners.

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<sup>1</sup> This abandonment proceeding was initially adjudicated by our predecessor agency, the Interstate Commerce Commission (ICC).

<sup>2</sup> These proceedings are not consolidated; they are being considered together for administrative convenience.

On March 29, 2001, CSXT filed a response to the petition filed in the two abandonment proceedings. Also on March 29, 2001, CSXT filed an answer to the complaint in which it denied the allegations and, on April 11, 2001, CSXT filed a motion to dismiss the complaint.<sup>3</sup> Petitioners replied on May 1, 2001.

## BACKGROUND

These proceedings involve two segments of a 1.88-mile stretch of CSXT east-west track between U.S. Highway 36 near Montezuma, IN, and the junction of that line with CSXT's north-south main line at Hillsdale. The eastern .71-mile segment (East Segment) is part of a longer line that was authorized for abandonment in 1994 in Montezuma Abandonment. That abandonment was consummated in September 1994. The western 1.17-mile segment (West Segment) was the subject of an abandonment exemption proceeding, Hillsdale Abandonment, in 2000. In the Hillsdale Abandonment proceeding, Parke County submitted an offer of financial assistance (OFA) under 49 U.S.C. 10904 to acquire the line segment involved in that proceeding.

More specifically, in July 1994, CSXT filed an application in Montezuma Abandonment to abandon the 7.34-mile segment of its line between Bloomingdale (milepost BD-184.07) and Montezuma (milepost BD-191.41), a point 1.17 miles east of Hillsdale.<sup>4</sup> The East Segment is the section of this line located between U.S. Highway 36 (milepost BD-190.70) and County Road 288 (milepost BD-191.41), near Montezuma. Parke County filed comments with the ICC on July 27, 1994, stating that it took no position on the abandonment then under consideration, but was concerned about the suggestion in CSXT's application that the railroad anticipated seeking authority to abandon the West Segment (milepost BD-191.41 to milepost BD 192.58), because Parke County was interested in developing a rail-served industrial park near Montezuma. CSXT filed a response (by letter dated August 3, 1994), stating, among other things, that the area of Parke County's concern was not included in the Montezuma Abandonment proceeding.

On July 29, 1994, Parke County requested that an interim trail use/rail banking condition be imposed for the Bloomingdale to Montezuma line under the National Trails System Act, 16 U.S.C.

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<sup>3</sup> By letter filed on April 13, 2001, CSXT informed the Board that, pursuant to 49 CFR 1111.10, the parties had agreed to postpone discovery and not to propose a procedural schedule pending the disposition of the motion to dismiss.

<sup>4</sup> At that time, no traffic had moved over the Bloomingdale-Montezuma segment for more than 2 years. Nevertheless, CSXT did not invoke the class exemption for abandonment of out-of-service lines at 49 CFR 1152.50, but instead filed an application for abandonment authority under 49 U.S.C. 10903.

1247(d) (Trails Act). On August 19, 1994, the ICC authorized CSXT to negotiate an agreement with Parke County for interim trail use or, absent agreement, to abandon that line. No Trails Act agreement was reached with Parke County, and CSXT notified the ICC of consummation of the abandonment by letter dated September 27, 1994.

In January 1995, Parke County objected to the removal of the track materials on the .71-mile East Segment between U.S. Highway 36 and Parke County Road 288, on the basis of its position that none of the line west of U.S. Highway 36 had been authorized to be abandoned in Montezuma Abandonment. In a letter dated February 2, 1995, CSXT apologized for any misunderstanding regarding the western terminus of the track that had been abandoned, expressed interest in selling the abandoned line, and assured Parke County that the track between U.S. Highway 36 and County Road 288 would be left in place.

CSXT continued to provide rail service to Montezuma from the west until April 1997. At that time, a grain elevator near Montezuma, which was apparently the only remaining active rail shipper on that segment, was shut down. The elevator had been operated by a local businessman, Mr. Ray W. Martin, under the name MGC. Mr. Martin held a lease to the elevator, which he terminated in 1997 when the owners assertedly refused to make investments necessary to maintain and improve the facility. Mr. Martin then acquired the elevator at public auction in October 1998 with the intent to make needed improvements and restore operation if the elevator could be assured of rail service.

In light of the lack of demand for rail service, at some time during 1998 CSXT removed the crossing diamond at Hillsdale that had enabled it to cross its north-south line and serve Montezuma.<sup>5</sup> In November 1998, after CSXT had removed the diamond, MGC notified CSXT that it had acquired the grain elevator and sought to ensure the availability of rail service on the line between U.S. Highway 36 and Hillsdale. MGC asked CSXT to donate to Parke County the entire 1.88-mile stretch of track (including the .71-mile East Segment that had been abandoned in 1994). MGC also proposed that Parke County and MGC replace the interchange at Hillsdale, at Parke County's expense, to connect

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<sup>5</sup> CSXT had served MGC from the west after the line east to Bloomingdale was abandoned. To do so, CSXT used a "crossing diamond" where the carrier crossed its north-south line at Hillsdale. A crossing diamond is a plate installed where the rail of one line crosses the rail of another line. Because gaps in the rail are necessary to permit passage of wheel flanges, the rail ends at the gaps are high stress points and subject to deterioration. Any diamond with even moderately heavy traffic requires frequent maintenance. CSXT states that, because no traffic moved on the east-west line after April 1997, it removed the diamond and replaced it with continuous rail on the north-south main line to reduce damage and the need for maintenance. That configuration prevented CSXT from operating trains east of Hillsdale until either the diamond could be replaced or an alternate connection to CSXT's north-south main line, such as a wye track, could be built.

the line to CSXT's north-south main line by means of a wye track (a track connecting the north-south and east-west lines).

After nearly a year of discussion, CSXT sent a letter to Parke County and MGC setting forth the terms under which it would be willing to donate the specified segments. Under the proposal, Parke County was supposed to file a notice of exemption to acquire the line. However, time passed and Parke County did not file the notice. Because no progress had been made toward either acquisition by Parke County or developing rail traffic, CSXT advised Parke County that it intended to file a notice of exemption to abandon the West Segment and that Parke County could then file an OFA to acquire that segment.

On May 8, 2000, CSXT invoked the class exemption for abandonment of out-of-service lines by filing a notice in Hillsdale Abandonment to abandon the West Segment. Parke County filed a timely OFA on June 23, 2000. On June 28, 2000, the Director of the Office of Proceedings found Parke County to be a financially responsible party, and postponed the effective date of the abandonment exemption pending negotiation of an OFA. On July 3, 2000, Parke County submitted an agreement to us in which CSXT and Parke County set forth the terms under which Parke County would acquire the West Segment. These terms included, among other things, donation by CSXT of both the West and East Segments to a Parke County nonprofit entity. We issued a decision on July 14, 2000, authorizing Parke County to acquire the West Segment and dismissing the Hillsdale Abandonment proceeding, to be effective on the date the transaction was consummated.

While the parties were working out the details of the transfer, CSXT notified petitioners that it would not donate the already abandoned East Segment to Parke County. CSXT informed petitioners of an ongoing class action suit in Indiana state court brought against CSXT by adjoining landowners seeking declaratory relief regarding ownership of certain abandoned railroad rights-of-way.<sup>6</sup> In light of the legal risks arising from this suit, CSXT concluded it was not advisable to donate the segment and suggested, as an alternative to donation, that Parke County use its power of eminent domain to obtain the East Segment. CSXT stated that it would not oppose such a condemnation proceeding.

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<sup>6</sup> See Clark v. CSX Transp., Inc., 737 N.E. 2d 752 (Ind. App. 2000); CSX Transp. v. Clark, 646 N.E. 2d 1003 (Ind. App. 1995). In that case, class members have claimed ownership of abandoned right-of-way held by the railroad in less than fee simple, and have sought treble damages for slander of title or criminal trespass for sale or donation of property by CSXT after abandonment has been consummated. As a result, CSXT states that it is prohibited from transferring abandoned right-of-way property in Indiana without first obtaining court approval, which CSXT maintains is a cumbersome process and unlikely to succeed if the donee is not an adjacent landowner. Therefore, CSXT has determined that it would be unwise to donate any abandoned lines in Indiana.

On December 5, 2000, petitioners responded by letter that CSXT's refusal to donate the East Segment rendered any agreement concerning the acquisition of the West Segment under the OFA process invalid and unenforceable. They asked that CSXT join them in asking us to revoke CSXT's abandonment authority for the West Segment, that it replace the diamond immediately, and that it provide service, rates and equipment for MGC's grain and other industry traffic. CSXT declined, noting that the West Segment had moved no traffic for more than 2 years and met the criteria for abandonment under the class exemption for out-of-service lines, 49 CFR 1152.50. The instant petition and complaint followed.

## DISCUSSION AND CONCLUSIONS

### Montezuma Abandonment

The Montezuma Abandonment was lawfully consummated in 1994, as evidenced by CSXT's notice filed with the ICC on September 27, 1994.<sup>7</sup> However, petitioners now ask us to reopen and vacate that abandonment authority as to the .71-mile East Segment, citing 49 U.S.C. 722(b) and 49 CFR 1152.25(e)(6). Petitioners argue that CSXT did not intend to abandon any portion of the line west of U.S. Highway 36 in 1994, and that this is a mistake that warrants granting the relief sought. In support of their contention, petitioners point to some language in CSXT's letter to the ICC of August 3, 1994, and also to a schematic drawing accompanying the application for abandonment authority, which appears to depict a point only slightly west of U.S. Highway 36 as the western terminus of the abandonment.

We cannot grant petitioners' request for relief as to the East Segment. Petitioners rely on 49 U.S.C. 722(b), which gives us general authority to reopen a proceeding and change, terminate or suspend an action. In the case of an abandonment that has not yet been consummated, we clearly can entertain a petition to reopen on grounds of material error, new evidence, or substantially changed circumstances (49 CFR 1152.25(e)(4)), or to vacate on grounds of significant procedural defects, such as the loss of a properly filed protest or the failure of an applicant to afford the public the requisite notice (49 CFR 1152.25(e)(6)). But we do not have the same discretion to reopen and/or vacate an abandonment decision after any conditions that we have imposed are satisfied and the abandonment has been consummated.<sup>8</sup> Parties, and the public, rely on our actions, and there is a need for finality in

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<sup>7</sup> A notice of consummation is deemed to be conclusive evidence of consummation of the abandonment if there are no legal or regulatory barriers to consummation (such as outstanding conditions). See 49 CFR 1152.29(e)(2).

<sup>8</sup> Becker v. STB, 132 F.3d 60 (D.C. Cir. 1997); Fritsch v. ICC, 59 F. 3d 248 (D.C. Cir. (continued...))

the adjudicative process. Moreover, the interests of adjoining landowners or others who may have a reversionary interest in the underlying land are frequently affected by an abandonment.

Accordingly, our jurisdiction over a rail line is generally considered to end when abandonment authority is granted and that authority is fully exercised. Hayfield N. R. R. v. Chicago & N. W. Transp. Co., 467 U.S. 622, 633 (1984); Preseault v. ICC, 494 U.S. 1, 5 n.3 (1990). See also Abandonment of Railroad Lines and Discontinuance of Service, 365 I.C.C. 249, 261 (1981) (“the disposition of rail property after an effective certificate of abandonment has been exercised is a matter beyond the scope of the [agency’s] jurisdiction, and within a State’s reserved jurisdiction. Questions of title to, and disposition of, the property are . . . matters subject to State law.”). There are rare cases, such as instances of fraud, where we may assert jurisdiction over property after abandonment authority has been exercised.<sup>9</sup> But this is not such a case and, in fact, fraud has not even been alleged here by petitioners.

Moreover, petitioners have not alleged any procedural defects here that would warrant vacating the abandonment authorization, even if we still had the power to do so. Rather, they claim that CSXT made a mistake in identifying milepost 191.41 as the endpoint of their abandoned line – a claim that CSXT has denied. In its 1994 abandonment application, CSXT clearly identified the track it intended to abandon by both milepost demarcation and total mileage. The schematic drawing attached to the abandonment application also clearly indicated that the track proposed for abandonment began at milepost BD-184.07 and ended at milepost BD-191.41, a total distance of 7.34 miles. The ICC based its grant of authority on that information. The Federal Register notice, published on August 19, 1994, described the rail line to be abandoned by beginning and ending mileposts, and total mileage. That description was accurate and complete.

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<sup>8</sup>(...continued)  
1995).

<sup>9</sup> See, e.g., Chicago & Eastern Illinois Railroad Company – Abandonment Between Joppa Junction and Fayville Junction, IL, ICC Docket No. AB-11 (ICC served July 28, 1981) at 3. We note that our class exemption procedures for out of service lines specifically provide that a notice invoking these procedures which contains false and misleading information is void ab initio, thus providing a vehicle by which we can reassert jurisdiction after abandonment authority has been exercised. See, e.g., Southern Pacific Transportation Company — Exemption — Abandonment in Fort Bend County, TX (Petition to Reopen), Docket No. AB-12 (Sub-No. 110X) (ICC decided Aug. 4, 1987) at 6; S. R. Investors, Ltd., Doing Business As Sierra Railroad Company — Abandonment — In Tuolumne County, CA, Docket No. AB-239X (ICC served July 20, 1987) at 4. The Montezuma Abandonment, by contrast, involved an application, rather than the exemption procedures.

Parke County now complains that the schematic drawing filed with CSXT's abandonment application was unclear as to whether track west of U.S. Highway 36 was affected, and argues that CSXT's August 3, 1994 letter proves that it did not intend to abandon the East Segment. But a schematic drawing that CSXT submitted with its abandonment application in 1994 contained an accurate description of the track proposed for abandonment by mileposts and by total mileage. It is true that the "X" marks on the schematic drawing to highlight the track to be abandoned extended just slightly to the left of U.S. Highway 36. The schematic drawing also did not show County Road 288, located to the west of U.S. Highway 36, which apparently is the actual westernmost limit of the track covered by the Montezuma Abandonment. But while CSXT's "X" marks on the map, with hindsight, should probably have extended a fraction of an inch farther to the left on the schematic drawing than they actually did, we do not believe that the map establishes that CSXT did not intend to abandon the .71-mile East Segment. Further, there is no evidence, and petitioners have made no claim, that the map was deliberately misleading.

CSXT's August 3, 1994 letter to the ICC, written in response to a letter to the ICC dated July 27, 1994, from Parke County, was also not a model of clarity. But Parke County's letter, to which CSXT was responding, had not raised any question regarding where the precise limits of the proposed abandonment were. Parke County's letter stated that it took no position on the propriety of the specific discontinuance of rail service in Montezuma Abandonment, but instead requested imposition of a trail use/rail banking condition.

Parke County's letter did express concerns that CSXT might, in the future, abandon another segment of line from Milepost BD-191.41 near Montezuma to Milepost BD-192.65 near Hillsdale, serving an area that might be the site of a future industrial park that would benefit from rail service. CSXT's August 3, 1994 letter in response stated, correctly, that "[t]he area of concern being referred to . . . [i.e., from milepost BD-192.65 at Hillsdale to milepost BD-191.41 at Montezuma] is not included in CSXT's proposed abandonment . . . ." Unfortunately, after making this correct statement, the letter went on to talk at greater length about rail service to Parke County's proposed industrial park, and how "rail service east from Hillsdale to the west side of U.S. [Highway] 36" would be maintained, when, in fact, a .71-mile portion of that track had already been proposed for abandonment in the Montezuma Abandonment. However, the point of the discussion in the CSXT letter was that rail service would be maintained to the specific segment identified by Parke County in its letter as being essential, i.e., from Milepost BD-192.65 to Milepost BD-191.41. That statement was true. The unfortunate choice of an inaccurate reference later in the letter does not detract from the fact that the precise segment Parke County identified, by mileposts, in its letter, was not affected by the Montezuma Abandonment. Thus, we conclude that this misstatement is not so egregious as to overcome the explicit milepost references and other evidence to the contrary.

While it is true that CSXT apologized in a 1995 letter for “any misunderstanding” regarding the western terminus of the track that had been abandoned, CSXT’s apology is consistent with CSXT’s position that the misunderstanding was Parke County’s. Moreover, CSXT’s offer to retain the East Segment in place was, we believe, simply an effort by the railroad to maintain good relations with Parke County, rather than an admission of a mistake by CSXT.<sup>10</sup>

In sum, we find that we lack authority to grant the relief petitioners seek in Montezuma Abandonment. We note, however, that Parke County has other remedies available to it. As CSXT notes, the County can seek to obtain the East Segment through eminent domain. Our jurisdiction does not stand in the way of such an action, as the line is abandoned. Moreover, our action here does not preclude Parke County from attempting to redress any injury resulting from what it deems to be misdeeds by CSXT through an action in court against CSXT for damages.<sup>11</sup>

#### Hillsdale Abandonment

Petitioners also ask us to reopen the Hillsdale Abandonment under 49 CFR 1152.25(e)(4) and vacate all of the decisions that have been issued to date. According to petitioners, the withdrawal of CSXT’s offer to donate the East Segment to Parke County is a substantial change in the circumstances of this case warranting our disallowing the abandonment of the West Segment to proceed. Petitioners assert that, had CSXT not offered to donate the East Segment to them, they would have opposed the abandonment of the West Segment. Thus, petitioners assert, they relied on CSXT’s representations to their detriment.

Under 49 CFR 1152.25(e)(4), a petition to reopen an administratively final action must state in detail the respects in which the proceeding involves material error, new evidence, or substantially

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<sup>10</sup> We note that Parke County was made aware early in 1995, less than 6 months after the abandonment occurred, that it had misunderstood where the western terminus of the Montezuma Abandonment was located. Yet, it waited until 2001 to bring this issue to us. Even if the consummation of the abandonment did not foreclose us from reasserting jurisdiction in this case, the hurdle to be overcome by a party seeking to have us reverse a final action increases as time passes, particularly where, as here, the complaining party now brings to us information that it had more than 6 years earlier. We also note that the ICC imposed a trail use/rail banking condition on the Montezuma Abandonment in 1994, which could have preserved the line for future rail use, but Parke County failed to reach an agreement with CSXT that would have precluded the abandonment from being consummated.

<sup>11</sup> See The Burlington Northern and Santa Fe Railway Company — Abandonment Exemption — In Washington County, OR, Docket No. AB-6 (Sub-No. 383X) (STB served Dec. 28, 2001) at 3.



changed circumstances. We will grant a petition to reopen only upon a showing that the challenged action would be affected materially by one or more of those criteria. 49 CFR 1152.25(e)(2)(ii). Although Parke County has shown that circumstances have changed since the abandonment exemption was granted in Hillsdale Abandonment, we do not find that the changed circumstance presented by petitioners materially affects our prior decisions in the case or is so substantial as to warrant reopening. In other words, petitioners have failed to demonstrate why abandonment of the West Segment should not be allowed to proceed.

CSXT sought authority to abandon the West Segment by filing a notice of exemption pursuant to 49 CFR 1152.50 to invoke the class exemption for abandonment of lines that have not originated or terminated any traffic for at least 2 years. The ICC had established a streamlined process for handling such proposals after finding that a detailed review of proposals to abandon these types of lines under 49 U.S.C. 10903 is generally not necessary, because the lack of use of a rail line for such an extended period of time generally reflects a lack of public need for the line. See Exemption of Out of Service Rail Lines, 366 I.C.C. 885 (1983). The class exemption is subject to the OFA and notice of interim trail use (NITU) processes, through which interested parties can “rail bank” lines for future use if they wish to hold them in reserve. These processes allow an interested party to assume the opportunity cost<sup>12</sup> associated with retaining an unused line for possible future use.

By asking us to vacate all decisions in this proceeding, petitioners in effect ask that we revoke the class exemption, as it applies to this line, under 49 U.S.C. 10502(d). We may revoke an exemption, to the extent we specify, when we find that application in whole or in part of a provision of the Interstate Commerce Act is necessary to carry out the Rail Transportation Policy of 49 U.S.C. 10101. See LI Acquisition Corp. – Abandonment Exemption – In Montgomery County, PA, Docket No. AB-405 (Sub-No. 1X) (ICC served Aug. 23, 1994) (LI Acquisition). However, petitioners’ argument — that they would have opposed the abandonment if they knew then what they know now — is not enough in itself to overcome the presumption underlying the class exemption, i.e., that abandonment of such out-of-service lines is permissible. When a party asks us to undo an action that has already occurred, it has the burden to provide sufficient evidence to justify such an extraordinary request. Here, petitioners have not offered such evidence. Although each case must stand on its own, petitioners would need to show something more than simply a desire that they have future rail service available. Where a line has not been used for over 2 years, we would look at whether the anticipated traffic is sufficiently certain, sufficiently soon, and of sufficient volume and duration to justify requiring the carrier to hold the line open. The evidence of potential traffic that petitioners have provided here is

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<sup>12</sup> Opportunity cost, the economic loss a railroad experiences keeping its assets tied up in a particular rail line rather than deploying those assets elsewhere, is a relevant factor in an abandonment case. Abandonment of Railroad Lines — Use of Opportunity Costs, 360 I.C.C. 571 (1979), aff’d sub nom. Farmland Industries, Inc. v. United States, 642 F.2d 208 (7th Cir. 1981).

highly speculative, in light of the fact that Parke County has not even finalized a site for its industrial park and MGC has apparently not reactivated its grain elevator. Mere speculation about future traffic is not a sufficient basis upon which to deny or revoke an abandonment exemption. CSX Transportation, Inc. — Abandonment Exemption — In Bell County, KY, and Claiborne County, TN, Docket No. AB-55 (Sub-No. 478X) (ICC served Aug. 5, 1994) at 5-6.

In short, even if petitioners had opposed the Hillsdale Abandonment when CSXT filed its notice of exemption in May 2000, the information and arguments that they have presented here would not have affected the outcome. Accordingly, the request to reopen the Hillsdale Abandonment and vacate all decisions issued therein will be denied.

#### Motion to Dismiss the Complaint

The Board may dismiss a complaint that does not state reasonable grounds for investigation and action. 49 U.S.C. 11701(b). In considering a motion to dismiss, we construe the factual allegations of a complaint in a light most favorable to the complainant. See, e.g., Consolidated Rail Corporation — Abandonment Exemption — in Erie County, NY, Docket No. AB-167 (Sub No. 1164X) (STB served Oct. 7, 1998).

In their complaint, petitioners allege that CSXT's removal of a crossing diamond at Hillsdale and failure to provide service constitutes a violation of 49 U.S.C. 11101(a). In order to be found to have violated section 11101(a), however, the carrier must have failed to provide service upon reasonable request. A reasonable request is one that is specific as to the volume, commodity, and time of shipment. See LI Acquisition; The Atchison, Topeka, and Santa Fe Railway Company — Abandonment Exemption — In Lyon County, KS, Docket No. AB-52 (Sub-No. 71X) (ICC served June 17, 1991). Petitioners' December 5, 2000 generalized request for replacement of the crossing diamond and for CSX to agree to provide freight cars, rates, and rail service for unspecified traffic at some unspecified future time does not constitute a request for service requiring an immediate response. Thus, we cannot find that CSXT had an obligation to respond.

Moreover, as to the East Segment, even if petitioners had made a specific request for service, CSXT had no obligation to respond. When the abandonment of the East Segment was consummated in September 1994, CSXT's common carrier obligation was extinguished as to that segment.

Thus, petitioners have not provided reasonable grounds for investigation and action here. Accordingly, the motion to dismiss the complaint will be granted.

Other Matters

Finally, in light of what CSXT interprets as Parke County's apparent lack of interest in pursuing the OFA, CSXT has asked us to dismiss the OFA and allow it to abandon the Western Segment. Motion to Dismiss Complaint, at 22. Because the status of the OFA is unclear, and in view of our actions here, we will afford petitioners 30 days from the service date of this decision to inform us whether they still intend to acquire the West Segment pursuant to the OFA. If petitioners indicate that they no longer intend to do so, we will issue an order allowing the exemption to become effective.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The request to reopen and partially vacate the abandonment authority issued in ICC Docket No. AB-55 (Sub-No. 486) is denied.
2. The request to reopen STB Docket No. AB-55 (Sub-No. 579X) and to vacate all decisions issued therein is denied.
3. Respondent's motion to dismiss the complaint is granted.
4. Petitioners shall inform the Board whether they intend to proceed under the OFA process to acquire the West Segment by October 14, 2002.
5. This decision is effective on the date of service.

By the Board, Chairman Morgan and Vice Chairman Burkes.

Vernon A. Williams  
Secretary